



Submission No 64

# WIRRINGA BAIYA

## ABORIGINAL WOMEN'S LEGAL CENTRE INC

Providing free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or have been victims of violence

29 January 2010

Standing Committee on Aboriginal  
And Torres Strait Islander Affairs  
PO Box 6021  
Parliament House, Canberra ACT 2600

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Dear Committee,

### **Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system**

We refer to the above inquiry.

We apologise for the lateness of our submission but note that we had contacted the Committee Secretary and were advised that we could make a late submission. Please find our submission below.

#### **1. Our service**

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Wirringa Baiya Aboriginal Women's Legal Centre is a statewide community legal centre that focuses on assisting Aboriginal women and children who are, or have been, victims of violence. Given the focus of our service we work with many clients who have been victims of domestic violence, sexual and child sexual assault. We are funded by the NSW Attorney-General's Department through its' Community Legal Centre Funding Program, as administered by the NSW Legal Aid Commission.

We primarily assist our clients with civil and family law inquiries. While we do not defend our clients in criminal matters, a number of clients have had contact with the criminal justice system as a defendant. Wirringa Baiya has recently formed a partnership with two other community legal centres to provide a regular outreach clinic to three women's correctional centres located in Sydney. Through this regular advice service, our solicitors have anecdotal knowledge of the reasons for why high levels of Indigenous young people and young adults enter the criminal justice system. This submission draws on this experiences, our advice calls, general experience of working with Aboriginal women and young people and feedback our clients.

#### **Other sources of information**

Members of the Beyond Bars Alliance NSW including Kat Armstrong, Debbie Kilroy, Vicki Chartrand, Prof. Chris Cunneen and Dr. Eileen Baldry have contributed vital research and commentary around the issue of youth and Indigenous incarceration

rates. Groups such as Justice Action, Sisters Inside and the Public Interest Advocacy Centre have also carried out important research and advocacy for women, children and victims who have been incarcerated. The work of these groups and others provides vital information, commentary and research for consideration by this Inquiry.

We also draw your attention to research analysis contained in the report of the NSW Aboriginal Child Sexual Assault Taskforce which was established by the NSW Attorney-General Department.

## 2. Introduction

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This submission draws attention to the high incidence of violence experienced by Indigenous women and young people and its relationship with the high level of involvement of Indigenous young people in the criminal justice system. Victimization and offending behaviour intersect in two respects. First, a disproportionate number of Indigenous women and juvenile offenders have themselves been victims of violence – a likely contributor to their own offending behaviour. Second, Indigenous perpetrators of violence against Indigenous women and children are likely to come into contact with the criminal justice system. Drug and alcohol abuse acts as both a catalyst for, and as a way to cope with, violence, leading to the commission of fresh offences.

**Recognizing and addressing the causal links between victimization, offending and involvement with the criminal justice system must form the basis of any policies or programmes aimed at reducing the number of Indigenous young people coming into contact with the criminal justice system.**

The various ways in which overrepresentation of Indigenous people in the criminal justice system intersects with violence against Indigenous women and children has not been adequately explored. The Royal Commission into Aboriginal Deaths in Custody, a break-through inquiry, has been criticized for failing to sufficiently confront the issue of violence against Indigenous women and children (Marchetti (2007): 8).

In this submission, we first outline what statistical research reveals about the prevalence of violence against Indigenous women and children, with the focus being on the victimisation rates of women and young people in prison. This is followed by an overview of the disproportionate number of Indigenous women and young people in the criminal justice system. The significance of these statistics will then be considered in the context of the first two points covered in the Inquiry's terms of reference:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement; and
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this.

### **3. Violence against Indigenous women & children**

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Indigenous women and children are more likely to experience violence than their non-Indigenous counterparts, and young Indigenous women are particularly at risk. There is a plethora of statistics which show the significant over-representation of Aboriginal women and children as victims of violence, as summarized below.

#### **Nation-wide statistics**

According to the 2002 National Aboriginal and Torres Strait Islander Survey (ABS (2005)):

- 22 percent of Indigenous women aged over 18 years had been a victim of physical or threatened violence in the 12 months leading up to the survey.
- Nearly a third (31%) of Indigenous women who had suffered physical or threatened violence were 18 to 24 years old, the largest proportion of any group.
- Over all, Indigenous women were more than two-and-a-half times as likely as non-Indigenous women to have been a victim of physical violence.

#### **NSW specific statistics**

Overall, Indigenous people in NSW were approximately six times more likely to be victims of domestic violence than non-Indigenous people (BOCSAR (2005): 8). According to the results of a victim survey, 18.4 percent of people on NSW who had applied for an AVO were of Indigenous background (Rodwell & Smith (2008): 38).

#### **Indigenous women**

In NSW, Indigenous women are four times more likely than the average woman to be a victim of murder and Indigenous women and girls are twice as likely than the average female to be a victim of sexual assault (Fitzgerald & Weatherburn (2001): 2).

According to statistics supplied to us by BOCSAR, in NSW in the year up to September 2009 (BOCSAR (2010)):

- 8.2 percent of female victims of sexual assault were Indigenous; and
- 12.6 percent of female victims of domestic violence were Indigenous.

Yet Indigenous women make up 2.3 percent of women in NSW (ABS (2006)). Although any comparisons should be treated with caution, it is worth noting that ABS statistics show that in 2008, 6.4 per cent of female victims of sexual assault in NSW were Indigenous, suggesting there may have been an increase in the number of sexual assaults against Indigenous women in NSW (ABS (2008a)).

#### **Indigenous young people**

These same statistics from BOCSAR also show that in NSW:

- 9.1 per cent of sexual assault victims under the age of 18 years were Indigenous; and

- 12.6 percent of people under the age of 18 years, who were victims of domestic violence in NSW, were Indigenous.

By way of comparison 4.1 per cent of people in NSW under 19 years of age are Indigenous (ABS (2006)). Earlier ABS statistics show that 4.7 per cent sexual assault victims under the age of 20 years were Indigenous, again suggesting there may have been an increase in the number of child victims of sexual assault (ABS (2008a)).

These comparatively high rates of victimisation of Indigenous girls were also the subject of the NSW Aboriginal Child Sexual Assault Taskforce. BOCSAR submitted statistics to the Taskforce which showed that the victimisation indigenous females under 16 years in 2004 was 468.7 per 100,000 compared to 192.1 per 100 000 for non-Indigenous females (at 70).

Statistics from the NSW Department of Community Services indicate that the rate of reporting about Indigenous children is higher across all age groups than for other children, and has been increasing at a faster rate. Domestic violence was the most frequently reported issue (Department of Community Services (2007): 10).

### **Perpetrators**

The perpetrators of offences against Indigenous women and children are usually indigenous. In over 70 percent of sexual assaults against Indigenous women and children, the offender was an Indigenous person. In 85 percent of domestic violence related assaults the offender was Indigenous (Fitzgerald & Weatherburn (2001): 2).

## **4. Victimisation of Indigenous women & juvenile offenders**

The rates of victimization described above are magnified amongst Indigenous women and young people in contact with the criminal justice system. Research conducted indicates that a disproportionately high number of Indigenous women serving sentences have been victims of violence.

Overall, both Indigenous and non-Indigenous women prisoners have high rates of victimisation. The 2001 JusticeHealth Inmate Health Survey revealed that of all prisoners (Butler & Milner (2003)):

- 69 percent of women had been in at least one relationship where there was domestic violence; and
- over half (55 per cent) of all women surveyed had been subjected to at least one form of abuse within the last 12 months before coming to prison.

### **Indigenous women**

A survey of Indigenous women in custody in NSW reveals that these general victimisation rates are even higher for Indigenous women in prison:

- 70% had been sexually assaulted as children, 14 % were incest survivors, and around 61% were victims of physical violence (Lawrie (2003): 48).

- There is the high incidence of violence experienced as adults: seventy-eight percent of Indigenous women in custody. Nearly one half of Aboriginal women in prison were victims of a sexual assault as an adult (44 percent) and 5 percent said a family member had sexually assaulted them.
- Nearly all of the women who were victims of child sexual assault and have a drug problem, were also victims of violent abuse as adults (Lawrie (2003): 51).

The causal relationship between incarceration and previous victimisation is most apparent for Indigenous women convicted of homicide. Between 1991 and 2008, a study identified 55 cases Australia-wide where a battered women had been put on trial for killing their intimate partner. Of these cases, 35.2 percent involved Indigenous women (Stubbs & Tolmie (2008): 139). Yet Indigenous women make up only 2.4 percent of all Australian women (ABS (2006)). Further, in almost three-quarters of homicides committed by Indigenous women the victim was a male partner compared with 44 percent of non-Indigenous women convicted of homicide (Mouzos (2001): 4).

### **Indigenous young people**

Indigenous-specific statistics on the victimisation of young people in juvenile detention are not publicly available. However, research conducted by the NSW Department of Juvenile Justice reveals that 21 percent of young males indicated they had been victims of physical abuse with the same number reporting that they had been emotionally abused. Four percent admitted they had experienced sexual abuse. Twenty-three percent of females reported experiencing physical abuse, 45 percent reported emotional abuse and 22 percent reported experiencing sexual abuse (Department of Juvenile Justice (2003): 25). Far less than 1 per cent of people under 20 in NSW have been recorded as victims of sexual assault (ABS (2008)).

Young Indigenous people who have been the subject of care and protection reports and orders are overrepresented in the juvenile justice system:

- In 1996, it was reported that 37 percent of wards (as they were then referred to) who had received a juvenile justice court assessment were Indigenous, yet only 9 percent of all wards were Indigenous (Community Services Commission (1996): 24).
- In 2004, a police review revealed that every Indigenous child aged 10 and 11 years convicted of an offence had been the subject of at-risk report (Wood Commission (2008): 565-566).

Given that Indigenous children are overrepresented among children on care and protection orders (37 percent) (Pink & Alibon (2008): 225), the drift of children in care into the juvenile justice system is of considerable concern.

## **5. Over-representation of Indigenous women & young people in custody**

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### **Indigenous women**

Although Indigenous men by far outnumber Indigenous women in the prison population – 89.8 percent of the Indigenous inmate population in NSW are male –

Indigenous women are *more* over-represented with respect to non-Indigenous female inmates. In 2008 in NSW, 29.6 percent of full-time female prisoners were Indigenous, compared with 20.4 percent of men (Corben (2009): 73-4).

Moreover, from 1982 until 2008 the proportion of Indigenous female full-time inmates has increased 6.5 times, while for Indigenous men it has increased 3.3 times. That is, Indigenous women have gone from 4.6 percent in 1982 to 29.6 percent in 2008, while Indigenous men have gone from 6.1 percent to 20.4 percent. During this same period, Indigenous women have gone from making up 2.8 percent of the total Indigenous prison population to 10.2 percent (Corben (2009): 73-74).

Some recent statistics from Dr Baldry et al observe that women being held on remand represent a higher proportion (30 per cent) than their male counterparts (18 percent) and that given that women are charged with fewer serious and violent crimes than men, the number of women on remand should also be proportionally smaller to the number of men (Baldry (2001)).

#### *Reasons for increase in over-representation*

A number of factors have led to the over-representation of Indigenous women in prison. The most significant contributing factor to the increase in incarceration of Aboriginal women was the increase in remand (NSW Legislative Council (2001)) coupled with other general factors such as intimidation and discriminatory policing in public places and the maltreatment of Aboriginal women and girls, including racist and sexist verbal and physical abuse (Aboriginal Justice Advisory Committee (2002)).

Women in NSW are more likely to come before a court for theft and deception offences, while men are more often incarcerated for offences related to violence (Baldry (2001)). Between 1994 and 2003 the number of women incarcerated for drug offences increased 40% and many researchers (NSW Legislative Council 2001) provide strong evidence of the link between drug or alcohol related offences with sexual and physical abuse against women in Australia and as well as in other countries. Statistics from 2001 show that of Indigenous females sentenced to prison, 34.8 percent were sentenced for theft and related offences, compared with 16.9 percent for their non-Indigenous counterparts (Weatherburn et al (2003): 6)

These trends are further evidence of the discrimination within the criminal justice system as these offences are tied to the social and economic disadvantage faced by women.

#### **Indigenous young people**

Indigenous juveniles also have a higher rate of over-representation in the juvenile justice system than Indigenous adults in the criminal justice system. Australia-wide, 50 percent of the 630 young people in detention on an average day in 2007–08 were Indigenous. Indigenous young people aged 10-13 were particularly over-represented in the younger age groups (73 percent of those in detention). Similar proportion of females and males in detention were Indigenous (50% of males and 51% of females) (AIHW (2009): 56).

It has been observed that the main factor behind the increased incarceration rates of

Indigenous young people has been the increasing Indigenous remand population, particularly for those under the age of 15 years (Cunneen et al (2006): 129).

## **6. The development of new social norms & behaviours**

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The Inquiry seeks to gain an understanding of how social norms and behaviours for Indigenous young people may be developed so as to lead to positive social engagement. The social norms which underpin violence against Indigenous women and children are deeply entrenched and need to be addressed in myriad ways.

**Any such policies and programs needs first and foremost to address the widespread violence experienced by Indigenous women and children.**

**We submit that more money needs to be allocated to policing, housing, child protection, counseling, family support, health provision and education that specifically focuses on the needs of victims of violence.**

**Education programs that inform the community about what domestic violence and sexual assault is, and what to do, need to be developed and implemented on an ongoing basis. They need to be culturally, gender and age appropriate. This is especially important when dealing with children. Ina addition, culturally appropriate intensive family support needs to be available to all Indigenous families.**

Strategies aimed at changing these norms should not be confined to the behaviour of offenders. They must also address the circumstances of the victims. Indigenous women and children need to be provided with the means to respond to such violence.

**Victims must have access to services, for example help with AVO applications, places of refuge, counseling, and victims compensation.**

By focusing attention on the right of Indigenous women and children to be free of violence and by providing the services they need, social norms which tolerate and even condone violence are publicly challenged.

In its' report the NSW Child Sexual Assault Taskforce noted:

Communities described children and young people as seeing violence and sexual assault as a completely normal way of life. They are involved in crime and other risk taking behaviour such as substance addiction and prostitution, are ending up in gaols and institutions and experience a hopelessness and despair that is all too often resulting in self-harm and suicide. (2006: at 56)

An adequate response to the needs of Indigenous victims of violent crimes would also go some way to reducing offending behaviour of Indigenous people who have a history of prior victimisation. Victims who have meaningful alternatives to retaliation against their attackers and to the abuse of drugs and alcohol, will reduce the types and patterns of behaviour that often lead to first contact with the criminal justice system.

The high levels of violence against Indigenous women and children is intimately linked to the high number of Indigenous juveniles and adults involved in the criminal justice system. The act of violence itself may be the subject of a charge against an Indigenous person, or it may have preceded and been the cause of another offence. Victims may retaliate against the perpetrator or take their frustration out others leading to the commission of further offences.

The range of factors including behavioural responses to repeated victimization and violence, mean that Indigenous women are more likely to appear in the criminal justice system at an earlier age. However, it should be noted that women's disadvantage generally, the effects of economic and social disadvantage, victimization, sentencing and remand also contribute to the high levels of incarceration of Indigenous women and young people.

It is our view that social and economic disadvantage, increase the likelihood of violent behaviour within Aboriginal families and communities. We submit that such disadvantage in all its forms needs to be tackled and eradicated to assist in the reduction of violence against Aboriginal women, youth and children.

## **7. The impact of alcohol and other substance abuse**

The Inquiry seeks submissions on the impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system. A complex set of relationships exists between violence against women and children and the abuse of drugs and alcohol. Perpetrators of violence against Indigenous women and children are usually Indigenous men who are under the influence of drugs and/or alcohol abuse. Research indicates that in 69.3 percent of homicides committed by an Indigenous person, both victim and offender had consumed alcohol, compared with 23.4 percent of non-Indigenous offenders (Mouzos (2001): 4).

Indigenous women and young people who suffer this violence may respond by turning to drugs and/or alcohol as a means of coping with the abuse. Drug abuse was identified as a significant risk factor for the women who have been abused as children: for Indigenous women in custody in NSW, approximately 71 percent of those who had been abused identified as having a drug problem (Lawrie (2003): 50).

Substance abuse by victims of violence may lead to the commission of offences by the victims of violence, either against the original perpetrator of the violence or others, including children. Survey participants:

[...] explained that child abuse and unresolved trauma as a child was primarily the underlying issue in their drug abuse and offending behaviour and current imprisonment. (Lawrie (2003): 50)



Many of our clients have used alcohol and drugs to block the memories of their abuse and numb the pain of their trauma. In our victims compensation work most of our clients who have experienced domestic or sexual violence have been diagnosed with serious and severe psychological disorders such as: post-traumatic stress disorder, anxiety and depression. In many cases these disorders were undiagnosed and untreated for many years.

### **Our experiences with women in prison**

In the context of our work in the three correctional centres in Sydney, a six month review of our work has indicated that, consistent with Lawrie et al, over 80% of women report being the victim of sexual assault or domestic violence. Much of the abuse began in childhood for these clients and rarely have they received counseling, support or advice about their rights previously. Many admit to the development of drug, alcohol or psychological conditions and most intimately link their offending behaviour (such as driving offences involving alcohol or drugs) to a coping mechanism for the abuse they experienced previously. Interestingly, although not surprisingly these clients are rarely coming to see a solicitor for legal advice about their victimisation.

### **Other research into victimisation of prisoners**

We are aware that the Australian Centre for the Study of Sexual Assault and the Public Interest Advocacy Centre is planning to conduct more comprehensive interviews and research during 2010 into the incidence of domestic violence and sexual assault in the female prison population.

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Yours faithfully,

Per: **Rachael Martin**  
**Principal Solicitor**

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